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EXAMINER

KAPADIA, MILAN S

ART UNIT	PAPER NUMBER
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2144

18

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/442,343

Applicant(s)

TURNER ET AL.

Examiner

Milan S Kapadia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-10,12-17 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-10,12-17 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 6 February 2004. Claims 1-2, 4, 6-10, 12-17, and 19-23 are pending. Claims 1, 8 and 16 have been amended. Claims 421-23 are newly added.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4, 6-10 12-14, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshfeghi et al (6,236,972) in view of Takeo (6,289,115) and further in view of Rozen et al. (6,073,106) and further in view of Milner et al. (6,339,410).

(A) As per claim 1, Moshfeghi teaches a patient information system comprising:
a computer server having a patient information forum for at least one patient, and each said patient information forum containing information regarding an individual patient

(Moshfeghi; figure 1 and col. 2, lines 43-57; the examiner interprets the “personalized web server” as the “server” and interprets the “CPR” as a form of “information regarding an individual patient.”);

a publicly accessible computer input device networked to said computer server (Moshfeghi; figure 1; the examiner interprets the “client” as the “publicly accessible computer input device.”); and

a security subsystem operably positioned between said patient information forum and said input device (Moshfeghi; col. 2, lines 43-46; the examiner interprets system providing “access control for particular patient” as the “security subsystem.”)

Moshfeghi fails to expressly teach a publicly accessible computer output device networked to said computer server. However, this feature is old and well known in the art, as evidenced by Takeo’s teachings with regards to a publicly accessible computer output device networked to a computer server (Takeo; figure 1 and col. 5, lines 9-23; the examiner interprets the “laser printer” as a form of “publicly accessible computer output device.”) It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the system taught by Moshfeghi with Takeo’s teaching with regards to a publicly accessible computer output device networked to a computer server, with the motivation of improving efficiency in hospital organizations by providing a reliable source such as a laser printer for outputting data (Takeo; col. 1, lines 10-17).

The combined system of Moshfeghi and Takeo collectively fail to expressly teach the security subsystem is at least partially patient controlled and permitting access to said patient information forum free of identity verification by said computer server to at least one person

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selected by said individual patient. However, this feature is old and well known in the art, as evidenced by Rozen's teachings with regards to a security subsystem that is at least partially patient controlled and permitting access to said patient information forum free of identity verification by said computer server to at least one person selected by said individual patient (Rozen; abstract, col. 4, line 33-col. 5, line 11, and col. 5, lines 43-47) It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the collective system taught by Moshfeghi and Takeo with Rozen's teaching with regards to this limitation, with the motivation of providing the patient control over who has access to the patient's data (Rozen; col. 4, line 66-col. 5, line 11).

The combined system of Moshfeghi, Takeo, and Rozen collectively fail to expressly teach said patient information forum including means for exchanging messages, questions and answers among said patient, concerned third party family members and friends of said patient, caregivers of said patient and treatment center administrators without real time interaction. However, this feature is old and well known in the art, as evidenced by Milner's teachings with regards to said patient information forum including means for exchanging messages, questions and answers among said patient, concerned third party family members and friends of said patient, caregivers of said patient and treatment center administrators without real time interaction (Milner; abstract, col. 7, lines 24-35, and col. 11, lines 48-57) It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the collective system taught by Moshfeghi, Takeo, and Rozen with Milner's teaching with regards to this limitation, with the motivation of facilitating

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communication patient on ventilators, or who are otherwise speech impaired (Milner; col. 1, lines 22-25).

(B) As per claim 2, Moshfeghi teaches wherein said patient information forum is subdivided into a plurality of levels, and a different portion of said patient information forum being available at different ones of said plurality of levels (Moshfeghi; col. 3, lines 9-18); and said security subsystem being operable to limit access to said patient information forum to a predetermined group of persons, and limit access to different ones of said levels to subsets of said predetermined group of persons (Moshfeghi; col. 2, line 64-col. 3, line 8, col. 3, lines 59-67 and figure 2).

(C) As per claim 4, Moshfeghi teaches wherein a particular patient has an ailment; and said patient information forum for said particular patient includes a link to a database having information regarding said ailment (Moshfeghi; figure 1 and col. 2, lines 50-57).

(D) As per claim 6, Moshfeghi teaches wherein said computer server is an Internet server; and said patient information system has an Internet address (Moshfeghi; col. 2, lines 26-42; it is respectfully submitted, that a server, that supports http and provides web pages, is an Internet server. It is also respectfully submitted, that since Moshfeghi teaches IP addressing (Moshfeghi; col. 4, lines 21-23), the patient system does have an Internet address).

(E) As per claim 7, Moshfeghi teaches wherein said security subsystem includes an

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assignment of passwords to a predetermined group of persons that are approved for access to said patient information forum of a particular patient (Moshfeghi; figure 2 and col. 6, lines 49-58).

(F) Method claim 8 repeats the subject matter of system claims 1 and 2, as a series of steps rather than a set of apparatus elements. As the underlying structure of claims 1 and 2 have been shown to be fully disclosed by the teachings of Moshfeghi, Takeo, Rozen, and Milner in the above rejections of claims 1 and 2, it is readily apparent that the system disclosed by Moshfeghi, Takeo, Rozen and Milner include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claims 1 and 2, and incorporated herein.

(G) Method claim 9 repeats the subject matter of system claim 2, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 2 has been shown to be fully disclosed by the teachings of Moshfeghi, Takeo, Rozen and Milner in the above rejections of claim 2, it is readily apparent that the system disclosed by Moshfeghi, Takeo, Rozen and Milner include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 2, and incorporated herein.

(H) Method claim 10 repeats the subject matter of system claim 7, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 7 has been shown to be fully disclosed by the teachings of Moshfeghi, Takeo, Rozen, and

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Milner in the above rejections of claim 7, it is readily apparent that the system disclosed by Moshfeghi, Takeo, Rozen and Milner include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 7, and incorporated herein.

(I) Method claim 12 repeats the subject matter of system claim 4, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 4 has been shown to be fully disclosed by the teachings of Moshfeghi, Takeo, Rozen and Milner in the above rejections of claim 4, it is readily apparent that the system disclosed by Moshfeghi, Takeo, and Evans include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 4, and incorporated herein.

(J) Method claim 13 repeats the subject matter of system claim 6, as a series of steps rather than a set of apparatus elements. As the underlying structure of claim 6 has been shown to be fully disclosed by the teachings of Moshfeghi, Takeo, Rozen and Milner in the above rejections of claim 6, it is readily apparent that the system disclosed by Moshfeghi, Takeo, Rozen and Milner include the steps to perform these functions. As such, these limitations are rejected for the same reasons given above for system claim 6, and incorporated herein.

(K) As per claim 22, Moshfeghi teaches means for producing an audit trail regarding incidents in which said information forum was accessed (Moshfeghi; col. 4, lines 4-5).

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moshfeghi et al (6,236,972), Takeo (6,289,115), Rozen et al. (6,073,106), and Milner et al. (6,339,410) as applied to 8 above and further in view of Rapport et al. (6,192,112).

(A) As per claim 14, the combined system of Moshfeghi, Takeo, Rozen and Milner collectively fail to expressly teach networking a special needs computer to said computer server; and providing said special needs computer with at least one of a visually impaired computer interface, a touchscreen computer interface and a voice recognition computer interface. However, this feature is old and well known in the art, as evidenced by Rapport's teachings with regards to providing a medical information system having a voice recognition computer interface (Rapport; abstract, figure 2, and col. 19, line 39-col. 20, line 11). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to network the server taught by Moshfeghi, Takeo, Rozen and Milner to Rapport's computer, with the motivation of providing customized solutions to accommodate the different needs of different types of users, such as the visually challenged (Rapport; col. 2, lines 15-20 and 29-32). Insofar as applicant's claim recites "at least one," it is irrelevant as to whether the applied prior art discloses a "visually impaired computer interface" or a "touch screen computer interface"

5. Claims 15-17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshfeghi et al (6,236,972), Takeo (6,289,115), Rozen et al (6,073,106), and Milner et al. (6,339,410) as applied to claim 8 above and further in view of Herz et al. (5,754,939).

(A) As per claim 15, the combined system of Moshfeghi, Takeo, Rozen and Milner collectively fail to expressly teach providing said patient information forum with a bulletin board location having new information added to said patient information forum. However, this feature is old and well known in the art, as evidenced by Herz's teachings with regards to a bulletin board location (Herz; col. 73, lines 4-49). It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to incorporate the bulletin board location, as taught by Herz, within said patient information forum, with the motivation of enabling users of the system to discuss almost any subject imaginable, including the status of patients (Herz; col. 73, lines 17-23).

(B) Claim 16 differs from the features of claim 1 and 15 by reciting "a software program." As per this limitation, Moshfeghi teaches the server uses scripts (Moshfeghi; figure 1 and col. 2, lines 43-57). The remaining features of claim 16 repeat features of claim 1 and 15 and are therefore rejected for the same reasons given above in the rejections of claims 1 and 15 and incorporated herein.

(C) As per claim 17, Moshfeghi teaches means for requesting a password and means for evaluating a password (Moshfeghi; figure 2 and col. 6, lines 49-55).

(D) Claim 19 repeats the features of claim 4 and is therefore rejected for the same reasons given above in the rejection of claim 4 and incorporated herein.

(E) Claim 20 repeats the features of claim 2 and is therefore rejected for the same reasons given above in the rejection of claim 2 and incorporated herein.

6. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshfeghi et al (6,236,972), Takeo (6,289,115), Rozen et al (6,073,106), and Milner et al. (6,339,410) as applied to claim 1 above and further in view of Moshfeghi2 et al. (6,216,104).

As per claim 21, the combined system of Moshfeghi, Takeo, Rozen, and Milner collectively fail to expressly teach wherein said means for exchanging messages, questions, and answers includes audio recordings made by one of said patient, said concerned third parties, said caregivers, and said administrators and including means for generating a list of messages questions and answers that includes information regarding a date, time and originating person of the respective message, question and answer. However, this feature is old and well known in the art, as evidenced by Moshfeghi2's teachings with regards to wherein said means for exchanging messages, questions, and answers includes audio recordings made by one of said patient, said concerned third parties, said caregivers, and said administrators and including means for generating a list of messages questions and answers that includes information regarding a date, time and originating person of the respective message, question and answer (Moshfeghi2; abstract and col. 5, lines 2-40) It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the collective system taught by Moshfeghi, Takeo, Rozen and Milner with Moshfeghi2's teaching with regards

to this limitation, with the motivation of providing a message delivery system which includes speech of the originator of the messages (Moshfeghi2; col. 2, lines 6-10).

Response to Arguments

7. Applicant's arguments with respect to amended claim 1, 8, and 16 have been considered but are moot in view of the new ground(s) of rejection.

(A) At pages 5-6 of the 2/6/04 communication, Applicant argues each of the applied references individually.

In response, the Examiner respectfully submits that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In particular, the teachings that Applicant argues are missing from the Moshfeghi, Takeo, and Rozen references are clearly disclosed in the respective teachings of Milner, when considered collectively with that of Moshfeghi, Takeo, and Rozen, as discussed in detail within a prior Office Action (paper number 15) and in the preceding rejections, and incorporated herein.

Further, the features newly added and entered in the amendment filed 2/6/04, they have been shown to be fully disclosed by or obvious in view of the collective teachings of Moshfeghi, Takeo, Rozen, Milner, and/or Moshfeghi2, as discussed above in detail within the preceding sections of the present Office Action.

In addition, it is respectfully submitted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

8. Applicant's arguments filed 2/6/04 have been fully considered but they are not persuasive. Applicant's arguments will be addressed herein below in the order in which they appear in the response filed 2/6/04.

(A) At pages 5-6 of the 2/6/04 response, Applicant argues that "Moshfeghi can only be fairly interpreted as teaching away from Applicant's claimed system that allows anonymous access by individuals selected by the patient" in reference to claims 1, 8, and 16. In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what

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the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In addition, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s), which specifically support that particular motivation. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Furthermore, the Examiner respectfully notes that the cited reference was never applied as a reference under 35 U.S.C. 102 against the pending claims. As such, the Examiner respectfully submits that the issue at hand is not whether the applied prior art specifically teaches the claimed features, *per se*, but rather, whether or not the prior art, when taken in combination with the knowledge of average skill in the art, would put the artisan in possession of these features. Regarding this issue, it is well established that references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969). The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing

In re Lahu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii)____non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

Furthermore, it is reiterated again as also shown in MPEP § 2145, the Applicant has failed to show how modifying Moshfeghi's personalized hospital intranet web site system with Rozen's teaching of anonymous access to a networked system renders Moshfeghi's system unsatisfactory for its intended purpose of dynamically providing web sites or changes the principle operation of the system. As such, the Examiner maintains the Applicant's claimed invention is taught by the applied prior art of record.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art teaches a system and method for notifying users about information or events of an enterprise (6,092,102); and a home medical supervision and monitoring system (6,221,010).

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milan S Kapadia whose telephone number is 703-305-3887. The examiner can normally be reached on Monday through Friday, 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mk
mk

April 12, 2004


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100